

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	: Chapter 11
	:	
YELLOW CORPORATION, et al.,	:	: Case No.: 23-11069(CTG)
	:	: (Jointly Administered)
Debtors.	:	
	:	: Objection Deadline: October 25, 2023 @5:00 p.m.
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**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF NATIONS
FUND I, LLC TO DEBTORS' AMENDED NOTICE OF POTENTIAL ASSUMPTION
AND ASSIGNMENT OF CERTAIN CONTRACTS OR LEASES
ASSOCIATED WITH THE ROLLING STOCK**

Nations Fund I, LLC ("Nations Fund"), by and through its undersigned counsel, hereby submits this limited objection and reservation of rights (the "Objection") to the *Amended Notice of Potential Assumption or Assumption and Assignment of Certain Contracts or Leases Associated with the Rolling Stock* dated as of October 12, 2023 [ECF 824] (the "Cure Notice"). In support of this Objection, Nations Fund respectfully represents to the Court as follows:

BACKGROUND

A. Nations Fund's Leases

1. On or about March 16, 2012, Nations Fund and USF Holland, LLC ("USF Holland") entered into that certain Master Lease Agreement (the "Master Lease Agreement" together with the Schedules (defined below) and all other documents executed in connection with the transactions, including but not limited to the amendments described below, the "Lease Documents"), pursuant to which Nations Fund agreed to lease certain trailers to USF Holland.

2. Also on March 16, 2012, Yellow Corporation f/k/a YRC Worldwide, Inc. executed that certain Master Lease Guaranty (the "Guaranty") in favor of Nations Fund pursuant to which

it guaranteed all of the obligations of USF Holland under the Master Lease Agreement.

3. Prior to the Petition Date and in accordance with the Master Lease Agreement, USF Holland executed and delivered in favor of Nations Fund, (a) Equipment Schedule No. UHL-0007 to the Master Lease Agreement, dated January 31, 2018, for approximately twenty (20) Stoughton 53' trailers together with Rider No.1, Rider No. 2 and Rider No. 3 ("Schedule 0007"); (b) Equipment Schedule No. UHL-0008 to the Master Lease Agreement, dated January 31, 2018, for approximately sixty (60) Stoughton 48' trailers together with Rider No.1, Rider No. 2 and Rider No. 3 ("Schedule 0008"); (c) Equipment Schedule No. UHL-0009 to the Master Lease Agreement, dated February 28, 2018, for approximately ten (10) Stoughton 53' trailers together with Rider No.1, Rider No. 2 and Rider No. 3 ("Schedule 0009"); and (d) Equipment Schedule No. UHL-0010 to the Master Lease Agreement, dated February 28, 2018, for approximately seventy (70) Stoughton 48' trailers together with Rider No.1, Rider No. 2 and Rider No. 3 ("Schedule 0010"); (Schedule 0007, Schedule 0008, Schedule 0009 together with Schedule 0010, collectively, the "Equipment Schedules").

4. On May 1, 2020, USF Holland and Nations Fund entered into separate amendments with respect to each of the Equipment Schedules (the "Amendments").

5. On or about January 24, 2023, Nations Fund, USF Holland, and Yellow entered into that certain Omnibus Amendment of Equipment Schedules and Rider No. 1 (the "Amendment Agreement") pursuant to which the lease term was extended through February 1, 2024 and amending the monthly rent amount and stipulated loss values for each of the Equipment Schedules.

6. On or about April 26, 2023, Nations Fund, USF Holland, and Yellow entered into that certain Second Omnibus Amendment of Equipment Schedules and Rider No. 1 (the "Second Amendment Agreement") pursuant to which the lease term was extended through February 1, 2025

and amending the monthly rent amount and stipulated loss values for each of the Equipment Schedules.

7. The Debtors defaulted pre-petition on their obligations under the Lease Documents by, *inter alia*, failing to make the rent payments due in August, 2023.

8. The Debtors have not made any lease payments to Nations Fund since the Petition Date, and, as such, Nations Fund is owed, among other things, the monthly rent payments for September and October, 2023.

9. The Debtors failure to pay amounts due under the Lease Documents is a breach of the Master Lease Agreement.

10. The total amount presently due and owing Nations Fund under the Lease Documents solely with respect to unpaid monthly rent obligations is not less than \$186,316.00.

B. The Bankruptcy Case and Proposed Assumption or Assumption and Assignment of Leases

11. On August 6, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b).

12. Debtors are managing their businesses and their properties as debtors-in-possession pursuant to Section 1107(a) and 1108 of the Bankruptcy Code. On August 16, 2023, the United States Trustee for the District of Delaware appointed an Official Committee of Unsecured Creditors. No trustee or examiner has been appointed in these Chapter 11 cases.

13. On August 7, 2023, the Debtors filed their Motion of the Debtors for Entry of an Order (I)(a) Approving the Bidding Procedures For the Sale or Sales of the Debtors’ Assets, (B)

Scheduling Auctions and Approving the Form and Manner of Notice Thereof; (C) Scheduling Sale Hearings and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief (the "Bidding Procedures Motion") [ECF 22]. Pursuant to the Bidding Procedures Motion, the Debtors sought an order, among other things, approving certain bidding procedures in connection with the sale or sales of substantially all of the Debtors' assets, and authorizing procedures to facilitate the assumption and assignment of certain executory contracts and unexpired leases of the Debtors (the "Assumption and Assignment Procedures").

14. On September 15, 2023, the Bankruptcy Court entered that certain order (the "Bid Procedures Order") granting the Bidding Procedures Motion [ECF 575].

15. On October 11, 2023, the Debtors filed the Notice of Potential Assumption or Assumption and Assignment of Certain Contracts or Leases Associated with the Rolling Stock (the "Rolling Stock Cure Notice") [ECF 819] which identifies on Schedule I each executory contract or unexpired lease that may be assumed by the Debtors and the proposed cure amount with respect to each executory contract or unexpired lease.

16. The Debtors included the four (4) Equipment Schedules (i.e., leases) with Nations Fund covering all 160 Stoughton trailers on Schedule I.

17. On October 12, 2023, the Debtors filed the Amended Notice of Potential Assumption or Assumption and Assignment of Certain Contracts or Leases Associated with the Rolling Stock (the "Amended Rolling Stock Cure Notice") [ECF 824] that similarly includes the four (4) leases between USF Holland and Nations Fund.

18. Pursuant to the Amended Rolling Stock Cure Notice, the Debtors propose to cure their obligations under the Nations Fund leases by paying the rent due through October 1, 2023.

LIMITED OBJECTION

A. All Defaults Must be Cured and Adequate Assurance Must be Given

19. Under section 365(b)(1)(A) of the Bankruptcy Code, if there has been a default under an executory contract, a debtor-in-possession may not assume such contract unless, at the time of assumption, the debtor cures or provides adequate assurance that it will promptly cure such default. See 11 U.S.C. § 365(b)(1)(A).

20. Pursuant to 11 U.S.C. §365, the cure amount must include all amounts necessary to cure any arrearage under the lease to be assumed. *See In re Handy Andy Home Improvement Centers, Inc.*, 196 B.R. 87, 93 (Bankr. N.D. Ill. 1996) (debtor must cure pre- and post-petition defaults prior to assumption).

21. Nations Fund objects to the proposed cure amount because while the proposed cure amount represents unpaid rent from August, 2023 through October, 2023, the Debtors' post-petition rent obligations will continue to accrue until such time as the Debtors assume or reject the leases with Nations Fund. In light of the Debtors recently filed Notice of Cancellation of Rolling Stock Bid Deadline and Rolling Stock Auction [ECF 857] as well as the Motion of Debtors for Entry of an Order (I) Approving Agency Agreement with Nations Capital, LLC, Ritchie Bros. Auctioneers (America) Inc., Ironplanet, Inc., Ritchie Bros. Auctioneers (Canada) Ltd., and Ironplanet Canada Ltd. Effective as of October 16, 2023; (II) Authorizing the Sale of Rolling Stock Assets Free and Clear of Liens, Claims, Interest, and Encumbrances; and (III) Granting Related Relief [ECF 852] filed on October 16, 2023, it is unclear when the Debtors may move to assume or reject the Nations' Fund leases.

22. Moreover, Nations Fund is entitled to the recovery of attorneys' fees, late fees and interest as part of the cure pursuant to the terms of the Master Lease Agreement and Section 365(b)(1) of the Bankruptcy Code. *See generally In re Appleillinois, L.L.C.*, No. 13-20723, 2014 WL 294327 (Bankr. E.D. Ky. Jan. 24, 2014); *In re Senior Care Centers, LLC*, 607 B.R. 580 (Bankr. N.D. Tex. Oct. 4, 2019); and *In re Williams*, No. 10-11108 BLS, 2011 WL 2533046 (Bankr. D. Del. June 24, 2011).

23. In addition, given, among other things, the recent payment issues, Nations Fund will require adequate assurance of future performance.

RESERVATION OF RIGHTS

24. Nations Fund expressly reserves all of its rights under the Master Lease Agreement, the Bankruptcy Code, or applicable law, including, without limitation, the right to (a) supplement or amend this Limited Objection and to assert any additional issues with respect to any proposed assumption and assignment of the Master Lease Agreement on any and all grounds; (b) assert any and all additional issues in connection with any proposed cure amount for the Master Lease Agreement; and (c) assert any additional objections to the assumption and assignment of the Master Lease Agreement.

WHEREFORE, Nations Fund I, LLC respectfully requests that this Court enter an Order denying the Debtors' proposed assumption of the Master Lease Agreement, requiring the Debtors to pay all amounts due under the Master Lease Agreement and provide adequate assurance of future performance by the reorganized debtors or any assignee, and affording such further relief as it deems appropriate.

Dated: October 25, 2023

By: /s/ Martin J. Weis
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